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Engineer-Manager

April 5, 2012

Lieutenant Colonel Michael C. Derosier  
Department of the Army  
Detroit District, Corps of Engineers  
477 Michigan Avenue  
Detroit, MI 48226-2550

Dear Lieutenant Colonel Derosier:

This letter is sent in response to your Regulatory Functions Branch letter of March 29, 2012 regarding our wetland/stream permit application for the proposed road project (CR 595) that is currently under review by the Michigan Department of Environmental Quality (MDEQ). It is our concern that many of the statements made in that letter are unsupported by fact and demonstrate a misunderstanding by your staff of certain critical components of the permit application documents. The following is a point-by-point response to some of those issues, with the Corps comments in italics.

Page 1. *"We do not support the project purpose as currently stated."*

The Corps comments render the Marquette County Road Commission's (MCRC) role in evaluating the purpose and need and determining the project purpose for new county roads irrelevant. This comment ignores the public nature and responsibility of the MCRC. The Corps comment and supporting rationale relating to the project purpose seems to be biased because Kennecott Eagle Minerals Company (KEMC) is the funding source and a major beneficiary of the new road. The comment ignores the fact that MCRC engaged in an extensive public participation process and relied upon studies that have been conducted to determine the purpose and need for CR 595. MDEQ has accepted the project purpose as stated in the application for permit. The Corps comments seem to confuse the terms "project purpose", which is a required component of the application for permit, and "purpose and need", which is a finding that is made during a scoping or public analysis for a proposed new road.

Page 2. *"MCRC indicates that County Roads 550 and 510 are not useable by Kennecott because they are not entirely all-season roads. Upgrading these routes may be a less damaging alternative when compared to constructing an entirely new route on the preferred alignment, which is currently an ATV trail."*

This statement is not supported by information presented in the application for permit. MCRC has made no such statement in the application regarding the use by Kennecott of CR 510 and CR 550 relating to all-season roads. In fact, on page 47, paragraph 3 of the Revised Alternatives Analysis & Project Assessment (AA/PA) submitted with the application for permit, MCRC states, "Use of either or both of these routes (i.e. CR 510 or CR 550) by KEMC would require many more truck trips, as these routes are not entirely all-season roads and lighter loads would be required during the spring breakup period, which usually lasts about two months."

It is also an erroneous statement to indicate that CR 595 is an entirely new route on an ATV trail (actually Trail 5 is a snowmobile trail and not an ATV trail). Portions of CR 595 are presently designated county roads, private roads, and logging roads/trails. In fact, 7.9 miles (37%) of the proposed CR 595 centerline is within 50 feet of passenger vehicle accessible roads or trails.

Page 2. *"Although MCRC indicates that their budget would not support the development and maintenance of any of the County Road 510 routes, County Road 510 is already a primary county road, and Kennecott would only fund maintenance for a maximum of 7 years of the preferred alternative."*

The CR 510/Red Road/Sleepy Hollow alternative route discussed in the application for permit is 41.3 miles in length, compared to the proposed CR 595 being 21.4 miles in length. CR 510 is designated as a primary county road, but the road is substandard and unimproved over the portion of the route included in this alternative route. Of the 41.3 miles of this alternative route, only 11 miles is on CR 510. MCRC has stated that maintenance of an additional 19.9 miles of primary county road that would be required for the CR 510/Red Road/Sleepy Hollow alternative route compared to the proposed CR 595 route is not practicable or prudent given its operating budget. At no place in the application for permit does MCRC state that Kennecott would only fund maintenance of CR 595 for a maximum of 7 years. In fact, there has been no formal agreement for funding the maintenance of CR 595.

Page 3. *"...an unknown number of temporary access fill pads would be necessary."*

The Corps is concluding that there will be wetland filling that has not been disclosed in the application for permit. There are no such fill areas planned. As stated in the permit application, if any temporary construction access is needed in wetlands, timber mats would be used to minimize impact on wetlands, which is a standard construction practice. One temporary road requiring wetland fill associated with the reconstruction of the Second River crossing has been identified and was included in the application for permit.

Page 3. *"for the preferred alternative, the marginal increase in logging, and currently permitted and future mining are directly tied to it and must be addressed as secondary impacts which would not occur but for a primary county road in the proposed location."*

The AA/PA clearly concludes that CR 595 will not be the cause of more logging or mining activity in the area served by the proposed road. The presence of CR 595 will not cause more mining or logging, but CR 595 is likely to make these heritage industries more efficient, benefitting the regional economy.

Page 3. *"Impacts associated with replacing existing stream crossings were not specific. The length of existing stream segments to be altered, and the lengths of the existing culverts to be replaced should be identified. Any downstream impacts (i.e. erosion from altered velocities during peak flows) from the channel changes should be evaluated."*

This comment by the Corps is difficult to understand, since Tab 6 of the application for permit includes a Stream Crossing Schedule that provides extensive detail on each proposed stream crossing.



Included in the 20 specific engineering factors that are listed for each of the proposed stream crossings are length of streambed reconstruction and length of existing culverts to be replaced.

The application for permit explains the Stream Simulation Methodology used for the design of the stream crossings on the proposed CR 595. This method was developed by the U.S. Forest Service to evaluate and minimize the long-term impact of stream crossings on the stream and associated aquatic resources and therefore was selected to evaluate the stream crossings on this project. To the best of our knowledge, this methodology has not been used on other major projects in Michigan; however it is our expectation that use of this methodology on CR 595 will ensure that the stream crossings will not have long-term negative effects, such as causing "erosive velocities" as implied by the Corps.

Page 3. *"Stream assessment findings from the Woodland Road application are provided, with no discussion of whether this adequately represents the currently preferred alternative".*

This comment implies that MCRC may have used information that does not adequately represent the present situation in regard to stream crossings. In fact, the stream data that was gathered previously for the Woodland Road project is applicable to the proposed CR 595. Any additional data or information that was needed for the CR 595 permit application was obtained and provided in the application for permit.

Page 3. *"If wetland impacts would occur in proposed borrow and grading areas outside of the identified wetland delineation corridor as shown on the Michigan Rapids Assessment Method (MiRAM) maps for the preferred alternative, they should be included in this total."*

This comment suggests there may be wetland impacts that were not included in the application. All wetland impacts associated with the proposed CR 595 have been included in the very detailed plans and associated documentation. Borrow pits are not proposed.

Page 3. *"There are discrepancies and omissions in the wetland delineation for the preferred alternative."*

We are unaware of any discrepancies and/or omissions in the wetland delineation. Wetland delineation in the permit application was prepared to be consistent with the requirements of MDEQ and was conducted according to the Corps of Engineers methodology. MDEQ would not have determined the application for permit to be administratively complete unless it included complete wetland delineations. A valid wetland delineation has been provided for all proposed impact areas.

Page 4. *"Grouping impacts only under forested, scrub-shrub, and emergent wetland types obscure the substantial acreage of rare wetland community types that would be impacted under the preferred alternative."*

There is discussion in the report dated April 2011 of the plant community types that were documented during the MiRAM wetland assessment for CR 595. Impacts on rare plant communities such as bogs or muskeg wetland types were purposefully avoided in determining the alignment of CR 595. Impacts to any other "rare" wetland types have also been minimized. The Corps characterization of "substantial acreage" of impacts to rare wetland community types is overstated and without basis in fact.



Page 4. *"In addition, rare plant surveys appear to be taken directly from the Woodland Road route, with no discussion of the potential for rare plant occurrences in new segments under the preferred alternative. Appendix M does not include accurate community descriptions for state-ranked wetland community types."*

Botanical surveys were taken over several years and in different times of the year for the Woodland Road project and for new segments of CR 595. Portions of CR 595 that differed from the route of the formerly proposed Woodland Road were investigated by botanists and MiRAM assessments were conducted. The documentation submitted with the application for permit makes this clear. The MiRAM report provides an accurate description of the plant community types encountered on the project study area.

Bottom of Page 4 and Page 5. *"The survey summary concludes that wolves will not be impacted by the preferred alternative based on a 2008 memo from Iron Range Consultants, which states that the mine itself would not have negative impacts on wolves. This memo explicitly limits itself to the mine site. There is no discussion of the potential direct or indirect impacts of a new, all-season paved primary county road on wolves."*

The 2008 memo referenced by the Corps does pertain only to the mine site and was part of the ecological investigations conducted as part of the mine site evaluation. But, that is not the only study conducted. On pages 120 and 121 of the AA/PA submitted with the application for permit there is a detailed discussion of the large mammal study. This study was conducted specifically to evaluate the potential impacts of the construction of a road on wolves and other large mammals. The study is valid for the proposed CR 595.

Page 6. *"The Section 404(b)(1) Guidelines....requires that, for non-water dependent activities, the applicant overcome the presumption that a practicable, less environmentally damaging alternative site, outside special aquatic sites, exists. Current documentation does not appear to accomplish this. Utilizing existing routes would limit additional aquatic impacts to areas which are already impacted by road crossings. A combination of establishing appropriate speed limits, installing additional traffic lights, adding turn lanes, widening intersections, or redirecting traffic in high use areas via improved connectors, and improvements to current county and local 4-season roads, are considered practicable alternatives with fewer aquatic impacts, which could improve connectivity between northern Marquette County and US-41."*

MCRC, as well as the Michigan Department of Transportation (MDOT) and private consulting engineers, have the expertise and the legal responsibility to make the findings that are alluded to by the Corps in its comment. MCRC has made the finding, with input from a very broad base of the local governmental units, industry, and the general public that there is purpose and need for a new primary county road in the road study corridor that was evaluated in the application for permit.

This finding of "least environmentally damaging practicable alternative" in this project review will weigh upon the determination of whether any other alternatives, if they have less environmental impact than the proposed CR 595, are indeed practicable. The determination of "practicability" must include, according to federal regulations, cost and logistics in light of the project purpose. MDEQ has accepted the project purpose presented in the application for permit. This finding will be clearly documented when additional materials now under preparation at the request of MDEQ are presented.



In addition, the Corps has made the assumption that the alternatives it suggests in its comment above will have “fewer aquatic impacts”. This will not be the case with all of the alternatives.

Page 7. *“Overall the proposed mitigation does not appear to have the same value as the wetlands that would be lost.”*

This conclusion by the Corps in regard to the viability of the wetland mitigation plan proposed in the application for permit, along with the Corps continued reference to impacts to “rare communities” in the second paragraph on page 7, is lacking in foundation. The Corps uses the word “value” in its conclusion, but does not specify what value it is evaluating; functional value, societal value, or monetary value. The Corps conclusion about the mitigation plan is subjective and unfounded in facts presented in the application.

Page 7. *“The 14 stream crossing replacements are counted in the application as stream mitigation. While undersized culverts would be replaced, there is not adequate support to show that these replacements will result in net benefits.”*

The Stream Mitigation section starting on page 223 of the AA/PA provides detailed description of the Stream Simulation Methodology and other measures that were implemented to avoid and minimize impacts to streams as a result of construction of the 22 stream crossings proposed on CR 595. Upgrading the 14 existing structures with box culverts or bridges with new designs based upon the Stream Simulation Methodology will undoubtedly constitute stream mitigation because of the direct benefits to the stream at the site of the crossing. The innovative use of the Stream Simulation Methodology which has not been widely implemented or required by MDEQ or the Corps prior to the proposed road project should be seen as a positive factor in stream evaluation.

Page 7. *Mitigation monitoring must provide an accurate assessment of mitigation success. The mitigation monitoring plan as proposed is inadequate.”*

The mitigation monitoring plan covers four pages starting on page 218 of the AA/PA is detailed and prepared according to MDEQ requirements for a preliminary mitigation monitoring plan. The plan includes a very detailed description of the monitoring protocols, extensive site performance standards, and the following statement: “If any of the mitigation wetlands do not meet the following performance standards by the end of the monitoring period, or are not satisfactorily progressing during the monitoring period, MCRC may be required by MDEQ to take corrective actions.”

MDEQ will specify any additional mitigation requirements in a permit for the project, including specifying any remedial actions, the length of the monitoring period (especially for forested wetlands), financial assurance, and conservation easement requirements

In regard to other comments in the Corps letter, some of the information is being prepared in response to a request from MDEQ to provide “clarification and amplification” of certain aspects of the proposed CR 595 project. This additional information should be helpful to the Corps in more fully understanding this proposed project.

The Corps comments closely resemble the comments made on the proposed Woodland Road application for permit on March 12, 2010. In the ensuing 18 months after the withdrawal of the Woodland Road application in May 2010, extensive effort was devoted to address the prior comments

of MDEQ, EPA, and Corps in the new CR 595 application. To have many of the same issues brought forth by the Corps in its recent comments, in spite of the submittal of substantial additional documentation is disappointing.

On the initial page of its comments, the Corps dismisses the stated, MDEQ-approved project purpose and concludes that the true, but unstated, project purpose is to provide a better trucking route to and from the Kennecott mine. Rather than focus on the stated, MDEQ-approved project purpose, the remainder of the Corps comments, in large part, focuses on that Corps-perceived project purpose. As discussed above and in the CR 595 application, resolutions from Marquette County, resolutions from the Townships surrounding the proposed CR 595 route, input from City, County and Township officials, discussions with business owners (not just Kennecott) who operate in Marquette County and, perhaps most importantly, feedback from the residents of Marquette County, served as the foundation for the stated, MDEQ-approved project purpose. Accordingly, we believe the Corps should redirect its focus away from what it perceives to be the project purpose and toward the stated, MDEQ-approved project purpose.

In spite of our disappointment with the letter we are willing to work cooperatively towards the Corps gaining a better understanding of the application. In order to do so we are going to need a more objective and less adversarial evaluation of the project and our scientific analysis. Therefore, we request that the Corps either retract its letter dated March 29, 2012, or engage in a new, more objective review of the CR 595 application materials.

We have never refused to gather data or respond to comments. We welcome constructive comments and strive to make this project as environmentally sensitive as possible. This is a very important project to the community and the region and its economic well-being. The citizens of Marquette County live and work here and are sensitive to the quality of life and environment, it is our backyard. Thus, suggesting the project is not in the public interest or ill-conceived is of no benefit and is counterproductive. We would hope the Corps would recognize that MCRC is the legitimate representative of the community and its transportation needs.

Sincerely,



James M. Iwanicki, P.E.  
Engineer-Manager

Attachment

CC: Peter Swenson, EPA, Chicago  
Melanie Haveman, EPA, Chicago  
Chris Mensing, US Fish & Wildlife Service, East Lansing  
John Konik, Corps of Engineers, Detroit  
Jean Battle, Corps of Engineers, Marquette  
Steve Casey, MDEQ, Gwinn